

**BEFORE ALLAN L. MCVEY INSURANCE COMMISSIONER
OF THE STATE OF WEST VIRGINIA**

**JOHN MORGAN,
Complainant,**

v. **ADMINISTRATIVE PROCEEDING NO.: 25-IC-181796**

**GEICO ADVANTAGE INSURANCE COMPANY,
Respondent.**

FINAL ORDER

The undersigned, Insurance Commissioner of the State of West Virginia, does hereby adopts and approves the Recommended Decision of the Hearing Examiner, appended hereto, as well as the findings of fact and conclusions of law therein contained. The Complainant failed to prove that the Respondent violated West Virginia State Rule § 114-14-6.13 but proved that the Respondent violated §§ 33-11-4(9)(c), 33-11-4(9)(f) and West Virginia Code of State Rules §§ 114-14-6.1 and 114-14-6.4(a).


Therefore, the complaints should be denied in part and upheld in part.

THEREFORE, it is **HEREBY ORDERED** that the Complaint by John Morgan is dismissed in part and granted in part.

The objections of any party aggrieved by this Order and to the Recommended Decision herein adopted are preserved.

The Commissioner's final orders are subject to judicial review in the Intermediate Court of Appeals as set forth in W.Va. Code § 51-11-4(b)(4). Any person aggrieved by this Order may, **within 30 days of the entry of the judgment being appealed**, file an appeal as set forth in W.Va. Code § 33-2-14 and Rule 5(b) of the West Virginia Rules of Appellate Procedure.

ENTERED this 18th day of February, 2026.



ALLAN L. MCVEY, CPCU, ARM, AAI, AAM, AIS.
INSURANCE COMMISSIONER

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**RECOMMENDED DECISION
OF THE HEARING EXAMINER**

On January 14, 2026, a hearing was held before Hearing Examiner Mark W. Carbone, Esquire, at the West Virginia Offices of the Insurance Commissioner, Charleston, West Virginia. James Nelson, Esquire, and John Morgan (hereinafter “Complainant”) made appearances. Glen Murphy, Esquire, appeared on behalf of Geico Advantage Insurance Company (hereinafter “Respondent”).

Based upon a thorough review of the entire record in this case, the undersigned now makes the following Findings of Fact and Conclusions of Law.

Findings of Fact

1. On April 19, 2025, the Complainant was traveling northbound on West Virginia State Route 10. The Complainant was driving a 2006 Chevy Silverado 2500 extended cab with four-wheel drive. The Respondent’s insured was heading southbound on the same route. As the two vehicles approached each other it became apparent that the Respondent’s insured was going to turn into a gas station right into the Complainant’s traveling lane. (Tr. P. 8, 12-13, 52)

2. The Complainant applied his brakes but was unable to stop. The Respondent's insured struck the Complainant's truck in the left rear quarter panel of the truck, just past his gas tank. The collision tore the rear end out from underneath the Complainant's truck and spun his vehicle around into the parking lot of the gas station. When the Complainant's truck went into the gas station it struck two parked cars. (Tr. P. 13)

3. One of the parked cars was a 2020 GMC Yukon. When the Complainant struck the Yukon, the Yukon went into another vehicle, a 2015 Chevy Silverado, which was on the other side of the Yukon. The Complainant later learned that there was a woman between the Yukon and the Silverado. The woman was struck by the Yukon and thrown into the Silverado. At this point the Respondent's insured vehicle was in the middle of the Road. (Tr. P. 13, 81)

4. The accident occurred right next to the local fire station. However, it took approximately fifteen minutes for the police and ambulance to arrive at the scene. The driver of the Yukon and the lady that was between the Yukon and the Silverado were transported to the hospital. (Tr. P. 13-14)

5. After the accident, the Respondent's insured was helped out of his vehicle by people in the area. The Respondent's insured was holding his head and it looked like he may have hit his head on the windshield of his vehicle. The Respondent's driver then walked, with help, thirty yards and sat down outside a café next to the gas station. At some point, the father of the Respondent's insured arrived at the scene of the accident and talked to the Complainant. According to the testimony of the Complainant, the father said that the Respondent would provide the Complainant with a rental car. The Complainant took several pictures of the scene of the accident. (Tr. P. 13, 15, 51: Ex. 5)

6. The Cabell County Sheriff's Department investigated the accident and determined that the Respondent's insured was at fault. The Complainant obtained a copy of the police report.(Tr. P 52, 64-72: Ex. 7, 8)

7. The Respondent attempted to contact the Complainant on the day of the accident but were unable to reach him. The Complainant testified that in the message he received that day the Respondent's representative stated that he would be able to get a rental car. The Complainant testified that he no longer had access to that message. The Complainant admitted that this is the only time that the Respondent mentioned a rental car. Since the accident occurred on a Friday, the Complainant was unable to call the Respondent back until Monday. (Tr. P. 8, 76, 78)

8. On April 21, 2025, the Respondent sent a letter to the Complainant acknowledging the claim and asking him to contact them so that he can provide them with his account of the accident. (Tr. P. 35: Ex. 3)

9. The Complainant was able to talk to a representative of the Respondent, Marchae Bailey, on Monday, April 21, 2025. After about fifteen minutes the call was shifted to an adjuster named Lindsey. Lindsey told the Complainant that the claim for the accident exceeded the policy coverage limits (Tr. P. 8-9, 76)

10. The Respondent sent the next letter to the Complainant on April 22, 2025. In that letter the Respondent stated that the damage arising out of the accident may exceed policy limits. The letter went on to state that they would not be able to pay any damages until they have received all the claims. In addition, the letter suggested that the Complainant may want to contact his own insurance company and his insurance company would then file a subrogation claim against the Respondent. The Complainant believed that this letter misrepresented facts since the Respondent said it was willing to settle the matter but then made the statement that damages exceeded policy

limits. (Tr. P. 41-44: Ex. 3)

11. The next letter was sent by the Respondent on April 23, 2025. This letter stated that if the Complainant suffered any injuries from the accident he was to contact the Respondent. (Tr. P. 19: Ex.3)

12. The Respondent sent another letter on May 15, 2025, advising that the Respondent had completed its investigation and this is a matter to be settled. The Respondent asked the Complainant to contact it. (Tr. P. 19: Ex. 3)

13. The Complainant created a handwritten phone log. The log indicated that he had talked to the Respondent on the Monday following the accident. (Tr. P. 24-25: Ex. 1)

14. According to the phone log, the Complainant called the Respondent the next day, April 25, and talked to Marchae Bailey. The purpose of the phone call was to get a rental car because his vehicle could not be driven. Ms. Bailey said that there was nothing she could do about the rental car since the claims far exceed the policy limits. (Tr. P. 25: Ex. 1)

15. On April 25, 2025, the Respondent called the Complainant. When he called back he talked to Lindsey. Lindsey also told him that there was nothing they could do since the claims exceeded policy limits. The Complainant tried to call the Respondent on April 28, 2025, but was unable to reach anyone. (Tr. P. 26: Ex 1)

16. The Complainant received a phone call on Monday, May 19, 2025, wherein a representative of the Respondent wanted to inspect the Complainant's vehicle. The Complainant met with the representative that day and he took pictures of the Complainant's vehicle. (Tr. P. 26-27, 88-89: Ex 1, 11)

17. The Complainant did not hear anything else from the Respondent until he called them on June 4, 2025, two days after the filing of the complaint with the West Virginia Offices of

the Insurance Commissioner.¹ (Tr. P. 27-28: Ex. 1)

18. There were more conversations between the parties after the date that the complaint was filed with the West Virginia Offices of the Insurance Commissioner. These conversations will not be considered in this decision since they occurred after the filing of the complaint.

19. The Complainant entered evidence his out-of-pocket expenses. The Complainant testified that this is not all the expenses he will have to incur to get his vehicle to pass state inspection. He did not obtain an outside estimate to repair his vehicle. (Tr. P. 53-55: Ex. 6)

20. The Complainant testified that the Respondent did not make any settlement offers prior to the filing of the complaint.. The Respondent did not notify the Complainant that it needed more time to investigate the claim. The Respondent did not deny the Complainant's claim. In addition, he stated that he was never informed that his claim would not be paid until all other claims were received. However, in the letter dated April 22, 2025, the Respondent stated, "We will not be able to issue any payments for property damage until all claims have been paid." (Tr. P. 41-44, 60-61: Ex. 3)

21. The Parties stipulated that the Respondent's insured had \$25,000.00 in property damage coverage. (Tr. P. 85: Ex. 10)

22. The Respondent stipulated that the Complainant was not at fault in the accident (Tr. P. 90)

23. Prior to the filing of the Complaint, the Complainant did not make a demand for payment for the repairs to his vehicle. (Tr. P. 93)

¹ The complaint was filed on June 2, 2025

West Virginia Code § 33-11-4(9)(c) is further defined in West Virginia Code of State Rules

§ 114-14-6.1, which states as follows:

§114-14-6. Standards For Prompt Investigations And Fair And Equitable Settlements Applicable To All Insurers.

6.1. Investigation of claims. -- Every insurer shall promptly conduct and diligently pursue a thorough, fair and objective investigation and may not unreasonably delay resolution by persisting in seeking information not reasonably required for or material to the resolution of a claim dispute. This section is not intended to conflict with the statutory requirements of the Medical Professional Liability Act, W. Va. Code §§ 55-7B-1 to 11, as the same relate to the assertion and investigation of medical professional liability claims.

The Respondent began its investigation the day of the accident, April 18, 2025, when it left a message for the Complainant. The Complainant contacted the Respondent the following Monday, the next business day. During the conversation that the Complainant had with the Respondent, the Complainant informed the Respondent his version of the accident. Several letters were sent by the Respondent to the Complainant. There were several other phone calls between the Respondent and the Complainant during the investigation.

On May 15, 2025, the Respondent sent a letter to the Complainant stating that the investigation was completed and the matter is to be settled. The Respondent asked the Complainant to contact it.

By May 15, 2025, less than a month after the accident, the Complainant was advised that the investigation was completed. The letter seemed to indicate, by stating it is to be settled, that it had concluded that its' insured had been at fault. By completing its investigation in less than a month, the investigation was prompt.

The next issue under the Rule is whether the investigation was thorough, fair, and objective. The Respondent contacted the Complainant to obtain his version of the accident. In addition, the Respondent sent an individual out to inspect and take pictures of the Complainant's vehicle. The

Respondent ultimately concluded that its insured was at fault. There is very little that the Respondent could do that it did not do to make the investigation thorough, fair and objective.

Based on the evidence, the investigation was prompt, thorough, fair, and objective since the investigation had concluded within a month, the Respondent obtained information from the Complainant about the accident, inspected the Complainant's vehicle, and determined that the Respondent's insured was at fault.

The issue in controversy under West Virginia Code of State Rules § 114-14-6.1 is whether the Respondent unduly delayed resolution by seeking information that is not reasonably required or material to resolution.

There is no doubt that the damage arising from this accident exceeded policy limits of \$25,000.00. The Respondent argues, that with this limitation and the amount of damage, it was unable to settle the matter until they had all the damage in hand so that a pro-rate share can be determined.

The Complainant argues that the delay is not reasonable since the Respondent was waiting for all the damage before it made an offer to the Complainant forcing the Complainant to wait. It goes on to argue that the Respondent had inspected the Complainant's vehicle and was aware of the damage to his vehicle.

It is understandable that the Respondent would want to know all the damage, but the issue is whether that fact is a reasonable reason to delay settlement. In its April 22, 2025, the Respondent wrote "We will not be able to issue **any** payments for Property Damage until all claims have been received." (emphasis added) The fact that the other individuals involved in the accident failed to provide damages to the Respondent is not the fault of the Complainant and it is not reasonable for the Respondent to withhold any payment to the Complainant waiting for the other claimants'

damages.

In its defense, the Respondent argues that West Virginia Code of State Rules § 114-14-6.10 is applicable in this matter. It states as follows:

6.10. Separation of claims. -- In any case where there is no dispute as to one (1) or more elements of a claim, payment for such element(s) shall be made notwithstanding the existence of disputes as to other elements of the claim where such payment can be made without prejudice to either party.

It is the Respondent's position that this Rule allows it to withhold payment to the Complainant because there are claims that are still outstanding. The Respondent asserts that to provide payment to the Complainant would prejudice the other claimants. The rule uses the word element. Elements of a negligence claim are duty of care, breach of duty, causation, and harm (damages).

In the instant action there are no issues dealing with duty of care, breach of that duty or causation. There really is not any issue with damage, at least from the Complainant's perspective. The Complainant's damages are finite and limited to the repair of his vehicle.

The Respondent argues that the term "without prejudice to either party" is referring to all of the claimants. The correct interpretation is that this phrase refers to the Complainant and the Respondent as the parties and not all potential claimants.

Contrary to the Respondent's assertion, this Rule is not applicable to the entire claim but only to one person's specific claim. For instance, if there was an issue on whether the Complainant's exhaust system was damaged and the parties disagreed whether the Complainant should be compensated for damage to his exhaust system, this Rule would allow for the settlement of every other element of the damage except for the exhaust system.

In the instant case, the Respondent would characterize each claim as an element under the Rule, however, that is not a correct interpretation of the Rule. Taking the Respondent's argument

to the extreme, one claimant could withhold their damage estimation to a time that the statute of limitations was about to expire. This would force the Complainant to file a lawsuit to protect his rights. This extreme example under the Respondent's argument concerning Rule § 114-13-6.10 would force the Complainant to incur additional unnecessary expense.

The elements cited in the Rule are only applicable to the elements of the Complainant's claim and not to the fact that there are several claims. The Respondent's invocation of Rule § 114-14-10 to the instant matter is not persuasive as a defense. Therefore, the Complainant proved that the Respondent violated West Virginia State Rule §114-14-6.1.

The next issue to analyze is whether the Respondent violated West Virginia Code § 33-11-4(9)(f), which state as follows:

(f) Not attempting in good faith to effectuate prompt, fair, and equitable settlements of claims in which liability has become reasonably clear;

These Code sections are more fully explained in West Virginia Code of State Rules § 114-13-6.4(a) which states as follows:

6.4. Offers of settlement. --

a. In any case where there is no dispute as to coverage and liability, it is the duty of every insurer to offer claimants or their authorized representatives, amounts which are fair and reasonable, as shown by the insurer's investigation of the claim, providing the amounts so offered are within policy limits and in accordance with the policy provisions.

In the instant matter there is no dispute that the Respondent's insured had coverage and liability is clear. The rule is very specific that the Respondent has a duty to offer the Complainant a settlement that is fair and reasonable as long as it is within policy limits.

The fact in this case is the Respondent made no offer of settlement. As discussed above, the Respondent has taken the position that it cannot make any offer of settlement until they know all the claim amounts. The Respondent's position is, since the damage arising out of the accident

will far exceed the damages of all the claimants, it cannot fairly divide the policy limits until all claims are determined. While that may be the case, the Rule does not contemplate or allow any deviation from the duty described in the Rule.

Therefore, by not making any offer of settlement once coverage and liability are clear is a violation of West Virginia Code of State Rules § 114-13-6.4(a).

Another potential violation cited in the Merit Letter is West Virginia Code of State Rules § 114-14-6.13, which states as follows:

6.13. Avoidance of payment. -- Where liability and damages are reasonably clear, no person may recommend that third-party claimants make claim under their own policies solely to avoid paying claims under an insurer's insurance policy or insurance contract.

In a letter dated April 22, 2025, the Respondent wrote the following:

“We will not be able to issue any payments for property damage until all claims have been received. We **suggest** that you file through your own insurance company for your damages and they will in turn contact us to collect the damages” (emphasis added)

As discussed above, liability is reasonably clear. The first issue to address is whether damages are reasonably clear. The Complainant, by proving that the Respondent came to inspect his vehicle, proved that the Respondent was aware of the damage to the Complainant's vehicle. Therefore, damages were reasonably clear to the Respondent.

The next issue is whether the Respondent's use of the word “suggest” is the same as recommend as used in the rule. Suggest is defined as “to mention or imply as a possibility” in the Merriam-Webster online dictionary. The word recommend is defined “as to present (something) as worthy of acceptance or trial” in that same dictionary.

There is a fine line between these two words. The Respondent used the word suggest meaning that it is possible for the Complainant to use his own insurance company to satisfy his damages. The Rule uses the word recommend, if effect it is saying that using his own insurance

is a possible approach to satisfying his damage.

While it is a very close call, it does not appear that the Respondent crosses the line of recommending that the Complainant use his own insurance company but is simply throwing that out as a possibility.

The Rule goes on to state that the purpose of making the recommendation is so that the Respondent can avoid paying a claim. In the instant matter the Respondent is telling the Complainant that if he makes a claim with his own insurance company, his own insurance company can then make a claim against the Respondent for subrogation. By stating this, the purpose of suggesting is not to avoid payment but to simply shift the recovery of the damage from the Complainant to his insurance company. In other words, the purpose is not to avoid payment but simply to take the burden off the Complainant.

By using the word suggest and by stating that payment can still be recovered from the Respondent, the Respondent does not violate West Virginia Code of State Rules § 114-14-6.13.

Finally, the Complainant, in his closing brief, makes the argument that the West Virginia should adopt the concept of “First to Settle.” The First to Settle rule allows an insurer to settle one or more multiple claims even if the settlements deplete policy limits. The Complainant, based on a survey by Butler Weihmuller Katz Craig LLP, argues that the First to Settle concept has been adopted by a majority of state jurisdictions.

The Complainant did not cite any West Virginia case law in support of this concept; however, he does cite the various State Rules that encourage reasonable and timely settlements. While a good argument can be made that if the West Virginia Courts are faced with facts like the instant matter, they may well adopt the First to Settle concept they have yet to do so. Therefore, until instructed by the West Virginia Supreme Court that the First to Settle concept is adopted in

the jurisdiction, the undersigned cannot adopt that concept.

Conclusions of Law

1. The West Virginia Offices of the Insurance Commission have jurisdiction over this matter by virtue of West Virginia Code Chapter § 33-2-3.

2. The Complainant has the burden of proof, by a preponderance of the evidence, to prove that the Respondent violated West Virginia Code §§ 33-11-4(9)(c), and 33-11-4(9)(f) and/or West Virginia Code of State Rules §§ 114-14-6.1, 114-14-6.4(a), 114-14-6.13.

3. The Complainant proved, by a preponderance of the evidence, that the Respondent violated West Virginia Code § 33-11-4(9)(c) and West Virginia Code of State Rules § 114-14-6.1 by proving that the Respondent delay resolution of the claim by seeking information not reasonably required to settle the matter.

4. The Complainant proved, by a preponderance of the evidence, that the Respondent violated West Virginia Code § 33-11-4(9)(f) and West Virginia Code of State Rules § 114-14-6.4(a) by proving that the Respondent failed to make a fair and reasonable offer of settlement when there was no dispute as to coverage and liability

5. The Complainant failed to prove, by a preponderance of the evidence, that the Respondent violated West Virginia Code of State Rules § 114-14-6.13 since the Respondent did not recommend that the Complainant make a claim under their own insurance policy but simply suggested that action.

RECOMMENDED DECISION

It is the recommendation of the Hearing Examiner that the Complainant failed to prove that the Respondent violated West Virginia State Rule § 114-14-6.13 but proved that the Respondent violated §§ 33-11-4(9)(c), 33-11-4(9)(f) and West Virginia Code of State Rules §§ 114-14-6.1 and 114-6.4(a). Therefore, the complaints should be denied in part and upheld in part.

Respectfully recommended,



MARK W. CARBONE